even the declaration that enemies should be regarded as aliens, thus depriving them of the right to transmit their real estate in any of the ordinary modes by deed, or devise, or descent. They stood in all respects as they did before the seizure or confiscation, with full power to transmit their estates in the premises by all the modes named. And there seems to us no just ground to argue that Wallach had not all the estate he ever had in this land, except his life-estate. This, we see very clearly, he had lost, and neither the termination of the war nor the amnesty would restore it to him, because neither could undo the facts upon which the confiscation proceeded.

We trust we have made the grounds of our dissent from the decision clear, and that we have done so in such moderate and courteous terms as are not inconsistent with our unqualified respect for the court, and the learned judge in particular who gave the opinion. And while we feel that our views may possibly be founded in error, not being able to feel the same confidence in our conclusions as we might upon some subjects with which we had been more familiar, we must, nevertheless, insist that in every view we are able to take of the matter the decision is at variance with all the well established canons of statutory construction known to the law, so far as involved in the case.

I. F. R.

Court of Appeals of Maryland.

HORATIO L. WHITRIDGE *v.* ROSALIE C. BARRY.

On a bill of interpleader filed in a Maryland court, to settle the conflicting claims of two parties under a policy of insurance made payable in Philadelphia, growing out of an assignment of the policy made in the city of New York, both parties having appeared to the suit, the case must be disposed of according to the law of Maryland.

A policy of insurance taken on the life of a husband for the sole use of his wife, and payable to her or her assigns, is a *chose in action* of the wife's, which she has the right to assign or otherwise dispose of with her husband's consent.

The wife holding such policy, attached her signature to a blank printed form not attached to the policy, without name of assignee or date, and with no directions from her as to filling up the blanks or as to the delivery of the paper or policy. Whether such a paper signed and delivered in blank with an express or implied authority from the party signing it to fill up the blank to the person to whom it is delivered, as he thought proper, and who afterwards filled it up accordingly, is a valid assignment sufficient to pass the title to the *chose in action*, *Quære?*

The advance to B. by A. of certain promissory notes, to a large amount, which he had finally to pay, upon the faith of B.'s securing him by the assignment of policies of insurance and other property, constitutes a sufficient consideration to support B.'s assignment to A. of such policies.

The signature of a *feme covert* to the assignment of a policy of insurance effected for her sole use, made with the consent of her husband, is sufficient without his signature.

The 2d sect. of art. 45 of the Code, providing for the conveyance of the wife's property by a joint deed with her husband, and the 11th sect. where the husband is required to join in the conveyance, were intended to apply to such conveyances

of her property as were required by law to be made by all persons, by deed or other instrument of writing, as the case might be. They do not exclude the ordinary method of conveyance.

But whatever the nature of the transfer, from regard to the interests of husband and wife, it must be made with the concurrence of the husband, express or implied.

A policy of insurance was taken on the life of a husband for the sole use of his wife, and payable to her or her assigns. The wife, influenced by the importunity of her husband, and under circumstances amounting to a controlling duress, and which deprived her of that necessary freedom in the exercise of her mental faculties to make the act binding upon her, attached her signature to a blank printed form not attached to the policy, without name of assignee or date, or designation of the policy, and with no direction from her as to filling the blanks or delivery of the assignment or policy. B. having advanced to the husband certain promissory notes to a large amount, which he had finally to pay, upon the faith of the husband's securing him by the assignment of policies of insurance and other property, the husband caused the assignment to be filled up with a transfer of the policy aforesaid to B., and delivered this assignment and subsequently also the policy itself to B. Upon the death of the husband, in a contest between the wife and the assignee of B. (for the benefit of creditors), as to which was entitled to recover on the policy, it was *held*, 1. That B.'s assignee could claim no greater right than B. held in the policy; 2. That the wife was entitled to recover, as the importunity under which she signed the instrument of assignment was such as to deprive her of her free agency, or such as she was too weak to resist, and she ought not to be held responsible therefor.

APPEAL from the Circuit Court of Baltimore City.

This was a bill of interpleader, filed by the National Life Insurance Company of the United States of America, chartered by Act of Congress, to have determined the respective rights of Rosalie C. Barry and Horatio L. Whitridge, trustee of William H. Brune, to the proceeds of a policy of insurance effected on the life of John S. Barry, husband of said Rosalie. The policy was made at Washington, D. C., August 28th 1868, for $5000, in favor of Rosalie C. Barry, to her sole use, if living, and to her executors, administrators and assigns, if dead; with a provision authorizing its assignment by way of security or absolutely, and made payable at Philadelphia.

About the beginning of August 1871, Rosalie C. Barry assigned this policy for a valuable consideration to William H. Brune; who received said assignment from John S. Barry, August 3d 1871, and subsequently, on the 13th of February 1872, made a general assignment of all his estate and effects, including the policy of insurance, to Horatio L. Whitridge, for the benefit of his creditors.

The assignment to Brune grew out of the following facts:

At several times prior to the assignment, Brune, trading under

the name of F. W. Brune & Sons, at the solicitation of said Barry, for his accommodation, and upon the pledge that the notes should be held sacred and certainly paid, and the loan secured by an assignment of policies of insurance on the life of said Barry, and of other property, loaned to Barry the promissory notes of F. W. Brune & Sons, to the amount of about $80,000, all of which notes Brune had ultimately to pay, which so seriously embarrassed him as to compel his failure, and the deed in trust to Whitridge. After the maturity and non-payment by Barry and the payment by Brune of a portion of the notes so loaned, Barry, in partial fulfilment of his promise to secure him, sent to Brune in August 1871, an assignment, executed by Rosalie C. Barry, in favor of Brune, with power of attorney annexed, of certain policies of insurance on her husband's life, in her favor, among which was the policy in question in this suit, and Brune thereafter renewed certain of the matured notes which he afterwards paid. The policies covered by the assignment were subsequently also handed to Brune.

This assignment was executed by Rosalie C. Barry, in blank, and filled up with the transfer of the policies aforesaid, by the direction of John S. Barry, to whom she had given it so signed by herself.

John S. Barry died in the city of New York on the 9th of March 1872, and the insurance company having refused payment under said policy to Whitridge, because of the claim and suit therefor of said Rosalie, instituted at Philadelphia, Whitridge brought suit against the company in the Superior Court of Baltimore City, which was afterwards discontinued.

Other facts in the case are stated in the opinion of this court.

The appeal is taken from the decree of the Circuit Court, awarding the amount of the policy to Rosalie C. Barry.

J. Morrison Harris and *Fred. W. Brune*, for the appellant.—This is to be construed as a Maryland contract; and a Maryland court, adjudicating the administration of a fund under its own jurisdiction, is bound to maintain and enforce an assignment valid under Maryland law, even if such assignment might be held invalid under the laws of New York, where said Rosalie C. Barry was living at the time of its execution: *Wilson* v. *Carson*, 12 Md. 75; *Smith* v. *McAtee*, 27 Id. 438, 439; Story's Confl. of Laws, § 28.

This assignment of a *chose in action* created and settled to the sole and separate use of Mrs. Barry, voluntarily signed by her in blank, handed to her husband, by his direction filled up, with a transfer among other things of the policy in question, was transferred to and held by Brune, under circumstances that made him a holder for value, and vested in him a legal and sufficient title to the proceeds of the policy.

It is not necessary to constitute a *bonâ fide* holding that the value should have been paid at the time of receiving the security—a part consideration is sufficient: *Sawyer* v. *Prickett et ux.*, 19 Wallace 166; *Swift* v. *Tyson*, 16 Peters 1; *Goodman* v. *Simonds*, 20 Howard 343.

Brune being in possession *bonâ fide* of the assignment, and a holder for value, cannot be affected in his rights by the assumed misrepresentations by which the husband is said to have procured it from his wife; because he was not cognisant of the means used and in no way aided or abetted them: *Corbett* v. *Brock*, 20 Beav. 524; *Van Duzer* v. *Howe*, 21 N. Y. 535; *Hall* v. *Hinks*, 21 Md. 416, 417; *Powell* v. *Bradlee*, 9 G. & J. 220.

She handed the assignment to her husband in blank, which gave him the right to fill it up; and her act held him out as the owner of, or as having power of disposition over, the property, and parties innocent of the fraud, dealing with him for value, are protected against her claim: *Van Duzer* v. *Howe*, 21 N. Y. 535; *N. Y. & N. H. Railroad Co.* v. *Schuyler*, 34 Id. 59; *McNeil* v. *Tenth National Bank*, 46 Id. 329; *White* v. *Vermont & Mass. Railroad*, 21 Howard 576; *McHenry* v. *Davis*, Law Rep. 10 Eq. Cases 88. See also *Carr* v. *Le Fevre*, 27 Penna. 413; *Mechanics' Bank* v. *N. Y. Railroad*, 4 Duer 480, 539, 582; *Carpenter* v. *Longan*, 16 Wallace 273.

The appellee is estopped from disavowing the legitimate consequence of her act, in thus allowing her husband to hold himself out as the owner of, or having full power of disposition over, the property, because Brune was misled by it to his prejudice; this constitutes an estoppel *in pais*: *Freeman* v. *Buckingham*, 18 Howard 182; *Funk* v. *Newcomer*, 10 Md. 301; for admissions *acted on by others*, whether true or false, are conclusive against the party making them in all cases between him and the party whose conduct he has thus influenced: *McClellan et ux.* v. *Kennedy*, 8

Md. 230. See also *McClellan* v. *Kennedy*, 3 Md. Ch. Dec. 247; *Hall* v. *Hinks*, 21 Id. 416, 417.

John P. Poe and *I. Nevett Steele*, for the appellee.

The opinion of the court was delivered by

STEWART, J.—The National Life Insurance Company filed a bill of interpleader in the Circuit Court of Baltimore City, bringing the fund in dispute within that jurisdiction for determination.

The respective claimants of the proceeds of the policy in question, under the decree of interpleader, have appeared, and the case must be disposed of according to the law of this state.

It seems to be conceded, on all sides, that the *lex fori* must govern in the determination of the case.

The policy in question was taken on the life of John S. Barry, for the sole use of his wife, Mrs. Barry, the appellee, to whom it was made payable, or to her assigns.

There can be no doubt, it was a *chose in action* of hers, which she had the right to assign, or otherwise dispose of, with her husband's consent: *N. Y. Life Ins. Co.* v. *Flack*, 3 Md. 341; *Emerick* v. *Coakley*, 35 Md. 185.

The alleged assignment was not endorsed on the policy; Mrs. Barry's signature was attached to a blank printed form of assignment, without name or date, and with no direction from her as to the filling up of the blanks with the name of any person, or with one or more, or all of her policies; or to deliver the paper, or policy, signed by her, to any person. Whether such a paper, signed and delivered in blank, with an express or implied authority, from the party signing it, to fill up the blank, to the person to whom it is delivered, as he thought proper, and who afterwards filled it up accordingly, is a valid assignment and sufficient to pass the title to the *chose in action*, it is not necessary, from the view we take of this case, to decide. The authorities are conflicting, and it is a debatable question. See *Kent* v. *Somerville*, 7 G. & J. 265; *Chesley* v. *Taylor*, 3 Gill 257; *Shriner* v. *Lamborn*, 12 Md. 174; *Spiker* v. *Nydegger*, 30 Id. 315; *Byers* v. *McClanahan*, 6 G. & J. 250; *White* v. *Vermont and Mass. Railroad Co.*, 21 Howard 375; *McNeil* v. *Tenth National Bank*, 46 N. Y. 329; *Litch* v. *Wells*, 48 Id. 637; *Edgerton* v. *Thomas*, 5 Selden 40; *Dawson* v. *Coles*, 16 Johnson 54; *Drury* v. *Foster*,

2 Wallace 24; *Hibblewhite* v. *McMorine*, 6 Mees. & Wels. 200. Brune having advanced to Barry certain promissory notes, to a large amount, which he had finally to pay, upon the faith of Barry's securing him by the assignment of policies of insurance and other property—constituted a sufficient consideration to support Mr. Barry's assignment to Brune of the policy in question: *Hannan* v. *Towers*, 3 H. & J. 147; *Stevenson* v. *Reigart*, 1 Gill 27.

We treat the matter as it affected Brune; his assignee, Whitridge, can claim no greater right than Brune held in the policy.

The signature of Mrs. Barry to the assignment of the policy (if the assignment was otherwise valid), made with the consent of her husband, would be sufficient without his signature thereto. Whether he signed with her or not, was not material to its validity.

Before the Code, the wife, as to her separate property, if not restricted to a prescribed mode, could convey it as if she were a *feme sole*: *Cook* v. *Husbands*, 11 Md. 492; *Chew's Adm.* v. *Beall*, 13 Id. 348; *Buchanan* v. *Turner*, 26 Id. 1.

The 2d sect. of 45th art. of Code provides for the conveyance of the wife's property by a joint deed with the husband; and the 11th section, where the husband is required to join in the conveyance, were intended to apply to such conveyances of her property as are otherwise required by the law to be made by all persons, by deed or other instrument of writing, as the case may be. They do not exclude the ordinary methods of conveyance.

The purpose of these provisions was to enable the wife, with the concurrence of her husband, to dispose of her property by the usual modes, and not to restrict the power of conveyance so as to require that every portion of her property, however minute, should be conveyed by herself and husband by solemn instrument of writing.

But whatever the nature of the transfer, from regard to the interest of husband and wife, it must be made with the concurrence of the husband, express or implied.

Mrs. Barry, who thus executed the alleged assignment of the policy, appears from the evidence to have been not at all deficient in mental capacity to understand what she was doing; on the contrary, endowed with more than ordinary intelligence. But, notwithstanding such was the character of her mind, the evidence, mainly from herself, shows to a sufficient extent, although not free from difficulty, that at the time she executed the assign-

ment in question, she was laboring under controlling duress, and had not that necessary freedom, in the exercise of her mental faculties, to make the act binding upon her, to all intents and purposes.

Mrs. Barry seems to have been advised of the views and financial efforts of her husband; was made familiar with his plans and schemes, and fully impressed, by his persistent importunities, with serious apprehension as to his condition and the state of his affairs. According to her statement, admitted as evidence, she seemed to have been fearful of the consequences as to his future course, if she failed to sign the paper as he requested. Most undoubtedly she was much exercised over this matter, hesitating and undetermined as to what she should do. But after having repeatedly before refused to sign the instrument left with her for the purpose, she was induced to change her purpose.

In determining as to her moral freedom, in the execution of the act, as affecting her legal responsibility, her relation as wife to her husband must have much force; and adequate allowance should be made therefor. The circumstances surrounding her and her husband giving character to the act, must be duly considered.

From a full consideration of all the evidence, we are constrained to the conclusion that there was such a pressure upon her, from the condition of her husband and apprehended consequences, she was deprived of that moral agency requisite to a binding act, in the conveyance of her policy, and that she ought not to be held responsible therefor.

Such was the unanimous opinion of the judges of the Court of Appeals of New York, upon the same testimony, affirming the action of the inferior court, and deciding that her signature was to be considered as affixed under duress and compulsion. Much respect is due to the opinion of that learned tribunal, and without very convincing evidence to the contrary, their conclusion is not to be disregarded.

A court of equity cannot hold her bound by her act, under the circumstances. Whilst it is not every degree of importunity that is sufficient to invalidate an instrument transferring property, yet if it be such as to deprive the party executing it of her free agency, or such as she is too weak to resist, she ought not to be held responsible therefor: *Davis* v. *Calvert*, 5 G. & J. 269; *Wittman et ux.* v.

Goodhand, 26 Md. 95. The facts disclosed in this case must give the appellee the benefit of such defence.

From a careful consideration of the evidence, and the principles of law and equity applicable thereto, we think Mrs. Barry ought not to be estopped from claiming the fund in court, and it must be paid over to her.

Decree affirmed and cause remanded.

Circuit Court of the United States, District of Connecticut.

WILLIAM K. LOTHROP ET AL. *v.* JOHN W. STEDMAN ET AL.

The right of the judiciary to declare a statute void for unconstitutionality is only to be exercised in clear cases, and this rule applies with especial force to decisions upon motions for provisional injunctions.

The principle that a stockholder of a company cannot maintain a bill in equity against a wrongdoer to prevent an injury to the corporation, unless it shall be averred, and shall affirmatively appear, that the corporation has refused to take measures to protect itself, does not extend to a bill which is in good faith filed by a creditor.

A holder of a policy in an insurance company is a creditor within this rule.

A charter is a contract between the state and the corporators, and the corporation takes the grant subject to the limitations contained in the act of incorporation. If no power of repeal is reserved, none can be exercised; but when a charter itself or a general statute provides that the charter is subject to repeal by the legislature, at its pleasure, without restrictions or conditions limiting the power of repeal, the legislature has the right to exercise its power summarily and at will, and its action, being a legislative and not a judicial act, cannot be reviewed by the courts, unless it should exercise its power so wantonly and carelessly as to palpably violate the principles of natural justice.

A repeal of a charter does not of itself violate or impair the obligations of any contract which the corporation has entered into. But the legislature cannot establish such rules in regard to the management and disposition of the assets of the corporation, that the avails shall be diverted from or divided unfairly and unequally among the creditors, and thus impair the obligation of contracts, or that the portion of the avails which belong to the stockholders shall be sequestered and diverted from the owners, and thus injure vested rights.

The legislature has the right to appoint a trustee, to take the assets and manage the affairs of a corporation, whose charter has been repealed, in conformity with the general, just rules which it has prescribed, or with the rules of a court of equity, if no statutory provisions have been enacted. If no trustee is appointed by the legislature, a court of equity, which never allows a trust to fail for the want of a trustee, would see to the execution of that trust, although by the dissolution of the corporation, the legal title to the property had been changed.

Though the statement of facts in a preamble to a statute is not evidence as against a party whose rights are affected without his consent, yet where the legis-